

United States Senate
WASHINGTON, DC 20510

April 7, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice

Dear Attorney General Garland:

At the Department of Justice (DOJ), nearly one in four employees fear reprisal for reporting suspected violations of law, rule, or regulation.¹ Appallingly, this rate represents the highest of any federal agency separately reported in the Federal Employee Viewpoint Survey (FEVS) for 2022², exceeds the government-wide average by approximately 50%, and indicates nearly 6,000 employees expressed a fear of reprisal.³ Further, the DOJ Office of the Inspector General (IG) wrote that “[t]he Department continues to face challenges with its employees respecting the role of whistleblowers.”⁴ In addition to the IG’s overarching concerns related to treatment of whistleblowers, it noted in 2021 repeated failures by DOJ to incorporate required whistleblower provisions in contracts and failure to ensure contractor personnel were made aware of the available protections.⁵ The FEVS data and the IG’s own conclusions are further supported by DOJ’s own statistical data with employee reprisal allegations increasing by approximately 64% at the Federal Bureau of Investigation and by approximately 9.5% across the DOJ between FY 2021 and FY 2022.⁶ This evidence raises troubling concerns that DOJ has cultivated a culture of

¹ See 2022 Office of Personnel Management Federal Employee Viewpoint Survey: Report by Agency, U.S. OFFICE OF PERSONNEL MANAGEMENT, at 26-27 (2022) <https://www.opm.gov/fevs/reports/data-reports/data-reports/report-by-agency/2022/2022-agency-report.pdf>.

² As certain small agencies are aggregated in the public data, it is not possible to determine if one of these small agencies had a greater fear of reprisal rate than the DOJ.

³ Office of Personnel Management, *supra* note 1.

⁴ Michael E. Horowitz, Inspector General, *Top Management and Performance Challenges Facing the Department of Justice – 2018*, U.S. DEPT. OF JUSTICE, at 29 (Oct. 15, 2018), <https://oig.justice.gov/sites/default/files/reports/2018.pdf>.

⁵ Michael E. Horowitz, Inspector General, *Management Advisory Memorandum: Notification of Concerns Regarding the Department of Justice’s Compliance with Laws, Regulations, and Policies Regarding Whistleblower Rights and Protections for Contract Workers Supporting Department of Justice Programs*, U.S. DEPT. OF JUSTICE, at 1-2 (Feb. 10, 2021), <https://oig.justice.gov/sites/default/files/reports/21-038.pdf#:~:text=The%20purpose%20of%20this%20memorandum%20is%20to%20advise,that%20did%20not%20mention%20protected%20disclosures%20of%20wrongdoing;41%20U.S.C.%20%24712.>

⁶ See Federal Equal Employment Opportunity Statistical Reports of Discrimination Complaints for FY 2022, DEPARTMENT OF JUSTICE (2023), <https://www.justice.gov/jmd/page/file/1556476/download>; Federal Equal Employment Opportunity Statistical Reports of Discrimination Complaints for FY 2021, DEPARTMENT OF JUSTICE

fear and reprisal against lawful whistleblowing. This alleged retaliation against whistleblowers is difficult to reconcile with your testimony during the March 1, 2023, Senate Judiciary Committee hearing where you stated that you have been a staunch supporter of whistleblowers and would commit to disciplining those who engage in retaliatory conduct against whistleblowers.⁷ One is left to wonder if any of these nearly 6,000 employees would have reported serious government misconduct if they didn't fear reprisal.

DOJ's culture of retaliation and failure to inform contractors of whistleblower protections as required by law only serves to chill whistleblowers from disclosing wrongdoing and misconduct and violates the law.⁸ Federal law prohibits agencies from retaliating against employees because they disclose information they believed demonstrated a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority or substantial and specific danger to public health and safety.⁹ Even before allegations of whistleblower reprisal surface, the "anti-gag" provision within the Consolidated Appropriations Act provides that no appropriated funds may be used to enforce an NDA or other restrictive policy, form or agreement that does not allow for lawful, protected disclosures and that each policy, form or agreement must use specific language apprising the employee of their rights to make such disclosures.¹⁰ Title 5 U.S.C. § 7211 also provides that the right of employees "to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied."¹¹

The FEVS survey results, the IG reports, and the marked increase in employee reprisal complaints are serious causes for concern and require independent congressional oversight. The IG has stated that "[e]roded public trust represents a significant and concerning challenge that weakens the Department's ability to fulfill its mission to uphold the rule of law, to keep our country safe, and to protect civil rights."¹² By correcting its mistakes, committing to government transparency and protecting whistleblowers who shine a light on waste, fraud, and abuse from retaliation, DOJ will begin the long process to rebuild its credibility and trust with the American people. So that Congress may conduct objective and independent oversight concerning DOJ's treatment of whistleblowers and the actions taken to correct its reported improper retaliation against whistleblowers, please respond to the following no later than April 21, 2023:

(2022), <https://www.justice.gov/jmd/page/file/1365641/download>; *Federal Equal Employment Opportunity Statistical Reports of Discrimination Complaints for FY 2022*, FED. BUREAU OF INVESTIGATION (2023), <https://www.justice.gov/jmd/page/file/1556491/download>; *Federal Equal Employment Opportunity Statistical Reports of Discrimination Complaints for FY 2021*, FED. BUREAU OF INVESTIGATION (2022), <https://www.justice.gov/jmd/page/file/1365821/download>.

⁷ CQ Transcript, Senate Committee on the Judiciary Holds Hearing on Dep't. of Justice, (March 1, 2023).

⁸ Horowitz, *supra* note 4; Horowitz, *supra* note 5.

⁹ 5 U.S.C. §§ 2302, 2303.

¹⁰ Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (2022).

¹¹ 5 U.S.C. § 7211.

¹² Office of the Inspector General, *Top Management and Performance Challenges Facing the Department of Justice—2022*, U.S. DEPT. OF JUSTICE, at 14 (2022), <https://oig.justice.gov/sites/default/files/reports/TMPC-2022.pdf>.

1. Please provide all current DOJ and component unit internal personnel policies and all training materials concerning whistleblower rights and protections.
2. Please provide all guidance DOJ has provided to its components on the use of the “anti-gag” provision.
3. For the past five fiscal years, how many employees from DOJ, to include its components, were found to have engaged in reprisal? How many of those employees were disciplined? Please list the name of each employee that: (a) engaged in whistleblower retaliation; (b) was disciplined for whistleblower reprisal allegations; and (c) the discipline taken against the employee.
4. Considering your obligations to protect against reprisal, what steps have you taken to protect whistleblowers and to reassure employees that whistleblowing will not result in retaliation?
5. Based on your own employee’s responses, what steps will you take to fix the culture of retaliation that exists within DOJ?
6. What is your explanation for DOJ personnel fearing reprisal at a rate that is approximately 50% greater than the government-wide average?
7. When was the last time DOJ reviewed its nondisclosure forms to ensure they fully comply with all applicable whistleblower laws?
8. In light of seemingly pervasive workplace culture problems, do you plan to modify your internal human resource practices or to conduct additional trainings to reassure and encourage employees to come forward as whistleblowers and protect them if they do? If not, why not?

Thank you for your cooperation with my ongoing congressional oversight. If you have any questions, please contact my Committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget